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No. 83-1414

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES,
Petitioner,

v.

LAURENCE G. RUSSELL, WILLIAM L. HANNA, AND EDDIE D. LANGWELL,
Respondents.

REPLY BRIEF OF PETITIONER TO MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

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The Petitioner in the above-entitled case, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes [hereinafter, "BRAC"] submits the following reply to the Memorandum of the Federal Respondent in opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit in the above-entitled case.

It should be observed that there is no indication that the views expressed in the Memorandum represent the views of the National Mediation Board whose decision is the subject matter of the litigation. They appear to represent solely the views of the Solicitor General. The Board has already been taxed unfairly by the Court of Appeals criticism. (Petition, Appendix E-1, at 17a). The defense of the Board is left to Petitioner.

The Memorandum suggests that the Petition should not be granted because the Court of Appeals' decision, reversing the Board action dismissing Respondent Russell's representation application, does not conflict with any decision of any other court of appeals and appears to be confined to unusual procedural circumstances which are of uncertain practical importance. However, the Memorandum concedes (at 4) that the petition presents the issue of whether the Board's views of the duties of a representative under the Railway Labor Act clearly violate that statute. It is respectfully submitted that such issue is of paramount importance in the administration of the statute because, as pointed out in the petition, the entire statutory scheme rests on the duties imposed by the Act on a representative. Nor does the Board's decision rest on any isolated procedural circumstances. The Board's decision itself cites other instances where it has applied the principle that an applicant for representation must have the intent to represent the craft or class. It further points out that the statute does not provide for decertification of a bargaining representative. These are Board principles grounded in the Board's interpretation of the statute itself and their application is not dependent on the manner in which they arose.

Moreover, the decision below is based on a conclusion that the Board's action constitutes an egregious violation of a direct statutory command to investigate representation applications. The application of the standards for limited judicial review of Board decisions in representation matters in this case conflicts with this Court's decision in *Brotherhood of Railway Clerks* v. *Association for the Benefit of Noncontract Employees,* 380 U.S. 650 (1965) and the other decisions of this Court, cited in the petition, restricting judicial review. If left standing, the decision below can open the floodgates to judicial review of Board

representation determinations which have hitherto been extremely limited consistent with this Court's opinions.

Respectfully submitted,

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Date: May 15, 1984